

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 2**

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BRUCE CARBERRY,

Petitioner,

-and-

CHARTER COMMUNICATIONS, INC.,

Case No. 02-RD-220036

Employer,

-and-

LOCAL UNION NO. 3, INTERNATIONAL  
BROTHERHOOD OF ELECTRICAL  
WORKERS,

Involved Party Union.

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**LOCAL UNION NO. 3, IBEW  
OBJECTIONS TO CONDUCT AFFECTING THE RESULTS OF THE ELECTION**

Pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board, Local Union No. 3, International Brotherhood of Electrical Workers ("Local 3") hereby files the following objections to the conduct of the election and to conduct affecting the results of the election held on February 25, 2019, in the above-captioned case, as follows:

1. Charter Communications, Inc. ("Charter"), by its agents and/or representatives, made promises and/or implied promises of benefits to employees during captive audience meetings in order to persuade them to vote to decertify Local 3.
2. Charter, by its agents and/or representatives, advised employees during captive audience meetings that employees would receive raises and/or increased access to benefits and/or programs in order to persuade them to vote to decertify Local 3.

3. Charter, by its agents and/or representatives, made threats and/or implied threats to employees during captive audience meetings in order to discourage them from voting to continue to be represented by Local 3, including, but not limited to, fines, penalties, and violence.

4. Charter, by its agents and/or representatives, advised employees during captive audience meetings that continued unionization was futile in order to persuade them to vote to decertify Local 3.

5. Charter, by its agents and/or representatives, incorrectly advised employees during captive audience meetings that the votes of striking employees would not count and/or misrepresented eligibility rules contained in the Notice of Election in order to persuade replacement employees to vote and/or discourage strikers from voting.

6. Charter, by its agents and/or representatives, provided an inaccurate *Excelsior* (employee eligibility) list by failing to include a list of involuntarily separations, which is the subject of a pending unfair labor practice charges (02-CA-223159 and 02-CA-220539) wherein Local 3 alleged, *inter alia*, that Charter unlawfully terminated employees for engaging in activity protected by the Act.

7. Charter, by its agents and/or representatives, provided an untimely *Excelsior* (employee eligibility) list after ballots had already been mailed by failing to include all employees it had deemed to have resigned, which is the subject of a pending unfair labor practice charge (02-CA-220539) wherein Local 3 alleged that Charter, by its officers, agents and representatives, has discriminated against employees striking members and former striking members of Local 3 (i) by refusing to reinstate striking employees to their former positions upon unconditional offer to return to work, (ii) by refusing to allow striking employees to remain subject to recall for the same or substantially equivalent employment and/or their former positions, upon unconditional offer to

return to work, (iii) by failing and refusing to inform striking employees of their recall status and/or positions upon their unconditional offer to return to work, (iv) by coercing such employees in exercising their rights to recall upon their unconditional offer to return to work, and by misrepresenting the recall rights of such employees, and (v) by terminating striking employees and/or notifying them and claiming that they have resigned their employment, for seeking reinstatement to their former positions upon their unconditional offer to return to work.

8. Charter, by its agents and/or representatives, encouraged, facilitated, and/or coordinated voting by persons not eligible to vote in the election.

9. Charter, by its agents and/or representatives, impeded, discouraged, or prevented eligible employees from voting in the election by terminating and/or deeming employees to have resigned after employees declined offers of reinstatement to non-equivalent positions.

10. By these and other acts, Charter, by its agents and/or representatives, interfered with the rights of employees to engage in protected activities, to organize and support Local 3, and thereby destroyed the laboratory conditions necessary for the conduct of the election.

WHEREFORE, for the foregoing reasons, Local 3 requests that the election be set aside and a new election ordered.

Dated: Melville, New York  
March 5, 2019

Respectfully submitted,

ARCHER, BYINGTON, GLENNON & LEVINE LLP  
*Attorneys for Local 3, IBZW*

By:



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## OFFER OF PROOF

1. Witness Name: Derek Jordan, Local 3 Business Representative

Summary of Testimony: The witness will produce an audio recording of a captive audience meeting conducted by the Employer, Charter Communications, Inc. its agents and/or representatives (collectively the "Employer"), recorded on January 11, 2019 during which the Employer can be heard: (i) making promises and/or implied promises of benefits to employees for voting to decertify Local 3; and/or (ii) advising employees that they would receive raises and/or increased access to benefits and/or programs should employees vote to decertify Local 3; and/or (iii) making threats and/or implied threats to employees for voting to continue to be represented by Local 3, including, but not limited to, being fined, subject to penalties and violence; and/or (iv) advising employees that continued unionization was futile; and/or (v) misrepresenting the eligibility rules as set forth by the Notice of Election by advising employees that the votes of striking employees would not count. The following Employer representatives are identified as present at the recorded captive audience meeting on January 11, 2019: (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 2**

**CHARTER COMMUNICATIONS (SUCCESSOR  
TO TIME WARNER CABLE OF NYC)**

**Employer**

**and**

**BRUCE CARBERRY**

**Petitioner**

**and**

**LOCAL UNION NO. 3, INTERNATIONAL  
BROTHERHOOD OF ELECTRICAL WORKERS**

**Union**

**Case 02-RD-220036**

**INTERIM REPORT ON DETERMINITIVE CHALLENGED BALLOTS and  
ORDER DIRECTING OPENING AND COUNTING OF CHALLENGED BALLOTS**

This report is limited to deciding a discreet number of challenged ballots. Specifically, I find, for the reasons stated below, that strikers who “crossed over” and returned to work are eligible to vote provided that they appear on the payroll covering the payroll period for eligibility, which is the payroll period ending January 3, 2019.

Pursuant to a Decision and Direction of Election issued on June 18, 2018, and a Notice and Direction of Election issued on January 10, 2019,<sup>1</sup> an election by mail ballot was conducted in the following unit:

All field operations, network operations, and warehouse technician employees employed by Charter Communications, Inc., the Employer, at its Bergen County, NJ, and Staten Island, Manhattan, Brooklyn, and, Queens, NY facilities, including Tech 1’s through Tech 5’s, Crew Chiefs, Foremen and General Foremen; excluding all other employees, guards and supervisors as defined in the National Labor Relations Act.

On January 25, a Tally of Ballots shows that of approximately 2,437 eligible voters, 62 ballots were void and 1,601 ballots were challenged, a sufficient number to affect the election results. Pursuant to Section 102.69 of the Board’s Rules and Regulations, I directed an investigation into the challenged ballots.

This report will be limited to deciding a discreet number of challenges, specifically, a subset of those ballots challenged by the Union on the basis that they are temporary replacement employees hired during an unfair labor practice strike, and I find as follows:

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<sup>1</sup> All dates herein are 2019.

## **I. THE CHALLENGED BALLOTS**

The Voter List consists of 2,433 names. The following chart shows the number of challenges made by the respective parties:<sup>2</sup>

<b>Party Asserting Challenge</b>	<b>Number of ballots Challenged</b>	<b>Challenged Envelope No.</b>
<b>Union</b>	933	1-25
<b>Employer</b>	666	26-45
<b>Petitioner</b>	662	26-44
<b>Board</b>	4	45

By letter dated February 27, the Region requested the parties' positions on why each of the challenged individuals is or is not eligible to vote together with all evidence in support of their positions.

In its March 5 submission, the Employer claimed, among other things, that the Union's "blanket" challenge of all eligible voters as temporary replacements should not be entertained. The Employer submitted a list of 329 voters ("cross-over list") that it claimed were Union members who crossed the picket line and returned to work.<sup>3</sup> Accordingly, the Employer asserts that strikers who returned to work are not temporary employees.

In its March 5 submission, the Union argued, among other things, that the challenges are inextricably intertwined with pending unfair labor practice charges filed against the Employer. As such, these voters are temporary replacements hired during a ULP strike. In its supplemental position statement dated March 11, the Union claimed that it does not have sufficient information to verify the accuracy of the Employer's cross-over list. The Union maintains that it is unable to distinguish replacement employees from crossover employees. The Union further argues that the challenges and related unfair labor practice charges should be consolidated for hearing before an Administrative Law Judge and that a piecemeal approach is not practical in this case because the remaining challenges are still determinative.

The Employer submitted payroll records in support of its cross-over list. The Region provided a copy of the Employer's cross-over list to the Union with a request that it check its accuracy.<sup>4</sup> As noted above, the Union claimed that it does not have sufficient information to verify the accuracy of the Employer's cross-over list. The Union, has not, however, provided

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<sup>2</sup> The last column shows the identity of the impounded challenged ballot envelopes containing within those challenged ballots. Each such envelope contains on its face the name of each voter whose challenged ballot is contained within.

<sup>3</sup> The strike commenced well more than a year prior to the election.

<sup>4</sup> The Region's review of the cross-over list and payroll submitted by the Employer against the names of the Union's challenged ballots reveals 332 voter names, not 329 asserted by the Employer.

any basis to dispute the Employer's assertion that certain employees are strikers who returned to work prior to the payroll period for eligibility and as such, are eligible to vote.

The Board has held that where, as here, an election is conducted more than a year from the commencement of an economic strike, replaced economic strikers who are actually reinstated by the eligibility date of the election are eligible to vote. *Wahl Clipper Corp.*, 195 NLRB 634, 636 (1972).

Consequently, I must overrule the Union's challenges to the 332 ballots cast by the reinstated strikers whose names are contained in the attached list. The Region determined, based on payroll records, that these 332 striking employees returned to work in unit positions and continued to appear on the Employer's payroll records on the January 3 eligibility date. In these circumstances, the cross-over strikers are eligible to vote. See *Wahl Clipper Corp.*, Id. Accordingly, I am overruling the Union's challenges of the 332 voters contained in the attached list.

## II. FINDINGS AND CONCLUSION

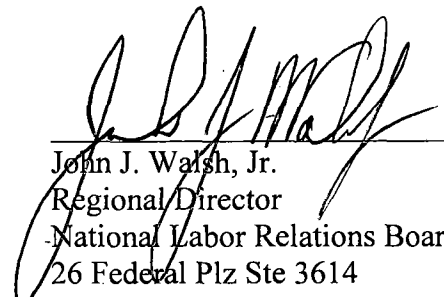
Having found that the Union has not provided a sufficient basis for the Region to sustain their challenges to the ballots cast by the 332 voters attached to this Decision, the Region orders the opening and counting of the ballots on the attached list.

## III. REQUEST FOR REVIEW

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this decision. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and must be received by the Board in Washington by **May 1, 2019**. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-filed, the Request for Review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

DATED: April 17, 2019



John J. Walsh, Jr.  
Regional Director  
National Labor Relations Board, R-2  
26 Federal Plz Ste 3614  
New York, NY 10278-3699

List of Crossover/Strikers

Name	Title
(b) (6), (b) (7)(C)	



(b) (6), (b) (7)(C)



(b) (6), (b) (7)(C)



(b) (6), (b) (7)(C)



(b) (6), (b) (7)(C)



(b) (6), (b) (7)(C)



(b) (6), (b) (7)(C)



(b) (6), (b) (7)(C)

